COPYRIGHT ACT

NO. 98 OF 1978

[Date of commencement: 1 January, 1979]
(except ss.1, 39, 40, on 30 June, 1978 and s.45 to be proclaimed)

as amended by
Copyright Amendment Acts, 56/1980, 66/1983, 52/1984, 39/1986, 13/1988, 6l/1989 and 125/1992
Intellectual Property Laws Amendment Act, No. 38 of 1997
Copyright Amendment Act, No. 9 of 2002

ACT

To regulate copyright and to provide for matters incidental thereto.

Definitions

1. (1) In this Act, unless the context otherwise indicates—

(i) "adaptation", in relation to—

(a) a literary work, includes—

(i) in the case of a non-dramatic work, a version of the work in which it is converted into a dramatic work;

(ii) in the case of a dramatic work, a version of the work in which it is converted into a non-dramatic work;

(iii) a translation of the work; or

(iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;

(b) a musical work, includes any arrangement or transcription of the work, if such arrangement or transcription has an original creative character;

(c) an artistic work, includes a transformation of the work in such a manner that the original or substantial features thereof remain recognizable;

(d) a computer program includes—

(i) a version of the program in a programming language, code or notation different from that of the program; or

(ii) a fixation of the program in or on a medium different from the medium of fixation of the program;

(ii) "arbitration" means arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act 42/1965);

(iii) "artistic work" means, irrespective of the artistic quality thereof—

(a) paintings, sculptures, drawings, engravings and photographs;

(b) works of architecture, being either buildings or models of buildings; or

(c) works of craftmanship not falling within either paragraph (a) or (b);

(iv) "author", in relation to—

(a) a literary, musical or artistic work, means the person who first makes or creates the work;

(b) a photograph, means the person who is responsible for the composition of the photograph;

(c) a sound recording, means the person by whom the arrangements for the making of the sound recording were made;

(d) a cinematograph film, means the person by whom the arrangements for the making of the film were made;

(e) a broadcast, means the first broadcaster;

(f) a programme-carrying signal, means the first person emitting the signal to a satellite;

(g) a published edition, means the publisher of the edition;

(h) a literary, dramatic, musical or artistic work or computer program which is computer-generated, means the person by whom the arrangements necessary for the creation of the work were undertaken;

(i) a computer program, the person who exercised control over the making of the computer program;

(v) "broadcast", when used as a noun, means a telecommunication service of transmissions consisting of sounds, images, signs or signals which—

(a) takes place by means of electromagnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and

(b) is intended for reception by the public or sections of the public,

and includes the emitting of programme-carrying signals to a satellite, and, when used as a verb, shall be construed accordingly;

(vi) "broadcaster" means a person who undertakes a broadcast;

(vii) "building" includes any structure;

(viii) "cinematograph film" means any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any other mechanical, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sounds embodied in a sound-track associated with the film, but shall not include a computer program;

(ix) "collecting society" means a collecting society established under this Act;
["collecting society" inserted by s.1(a) of Act 9/2002]

(x) "computer program" means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

(xi) "copy" means a reproduction of a work, and, in the case of a literary, musical or artistic work, a cinematograph film or a computer program, also an adaptation thereof: Provided that an object shall not be taken to be a copy of a work of architecture unless the object is a building or a model of a building;

(xii) "copyright" means copyright under this Act;

(xiii) "Corporation"…["Corporation" deleted by s.50(d) of Act 38/1997)]

(xiv) "country" includes any colony, protectorate or territory subject to the authority or under the suzerainty of any other country, and any territory over which trusteeship is exercised;

(xv) "derived signal" is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations;

(xvi) "diffusion service" means a telecommunication service of transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public; and diffusion shall not be deemed to constitute a performance or a broadcast or as causing sounds, images, signs or signals to be seen or heard; and where sounds, images, signs or signals are displayed or emitted by any receiving apparatus to which they are conveyed by diffusion in such manner as to constitute a performance or a causing of sounds, images, signs or signals to be seen or heard in public, this shall be deemed to be effected by the operation of the receiving apparatus;

(xvii) "distribution", in relation to a programme-carrying signal, means any operation by which a distributor transmits a derived signal to the general public or any section thereof;

(xviii) "distributor" in relation to a programme-carrying signal, means the person who decides that the transmission of the derived signal to the general public or any section thereof shall take place;

(xix) "dramatic work" includes a choreographic work or entertainment in dumb show, if reduced to the material form in which the work or entertainment is to be presented, but does not include a cinematograph film as distinct from a scenario or script for a cinematograph film;

(xx) "drawing" includes any drawing of a technical nature or any diagram, map, chart or plan;

(xxi) "emitted signal" means a signal which goes to a satellite;

(xxii) "engraving" includes any etching, lithograph, woodcut, print or similar work, but does not include a photograph;

(xxiii) "exclusive licence" means a licence authorizing a licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would, apart from the licence, be exercisable exclusively by the owner of the copyright; and "exclusive licensee" shall be construed accordingly;

(xxiv) "infringing copy", in relation to—

- **(a)** a literary, musical or artistic work or a published edition, means a copy thereof;
- **(b)** a sound recording, means a record embodying that recording;
- **(c)** a cinematograph film, means a copy of the film or a still photograph made therefrom;
- **(d)** a broadcast, means a cinematograph film of it or a copy of a cinematograph film of it or a sound recording of it or a record embodying a sound recording of it or a still photograph made therefrom; and
- **(e)** a computer program, means a copy of such computer program,

being in any such case an article the making of which constituted an infringement of the copyright in the work, recording, cinematograph film, broadcast or computer program or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the Republic;

(xxv) "judicial proceedings" means proceedings before any court, tribunal or person having by law power to hear, receive and examine evidence on oath;

(xxvi) "licence"…["licence" deleted by s. 1(m) of Act 125/1992)]

(xxvii) "licence scheme", for the purposes of Chapter 3, in relation to licences of any description, means a scheme prepared by one or more licensing bodies, setting out the classes of cases in which they are willing, or the person on whose behalf they act is willing, to grant licences of that description, and the charges, if any, and terms and conditions subject to which licences may be granted in those classes of cases, and includes anything in the nature of such a scheme, whether described as a scheme or as a tariff or by any other name;

(xxviii) "licensing body"…["licensing body" deleted by s. 1(o) of Act 125/1992)]

(xxix) "literary work" includes, irrespective of literary quality and in whatever mode or form expressed—

(a) novels, stories and poetical works;

(b) dramatic works, stage directions, cinematograph film scenarios and broadcasting scripts;

(c) textbooks, treatises, histories, biographies, essays and articles;

(d) encyclopaedias and dictionaries;

(e) letters, reports and memoranda;

(f) lectures, speeches and sermons; and

(g) tables and compilations, including tables and compilations of data stored or embodied in a computer or a medium used in conjunction with a computer,

but shall not include a computer program;

(xxx) "Minister" means the Minister of Trade and Industry; ["Minister" amended by s.1(b) of Act]9/2002)

(xxxi) "musical work" means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

(xxxii) "performance" includes any mode of visual or acoustic presentation of a work, including any such presentation by the operation of a loudspeaker, a radio, television or diffusion receiver or by the exhibition of a cinematograph film or by the use of a record or by any other means, and in relation to lectures, speeches and sermons, includes delivery thereof; and references to "perform" in relation to a work shall be construed accordingly: Provided that "performance" shall not include broadcasting or rebroadcasting or transmitting a work in a diffusion service;

(xxxiii) "photograph" means any product of photography or of any process analogous to photography, but does not include any part of a cinematograph film;

(xxxiv) "plate" includes any stereotype, stone, block, mould, matrix, transfer, negative, record, disc, storage medium or any version of a work of whatsoever nature used to make copies;

(xxxv) "prescribed" means prescribed by or under this Act;

(xxxvi) "programme", in relation to a programme-carrying signal, means a body of live or recorded material consisting of images or sounds or both, embodied in a signal;

(xxxvii) "programme-carrying signal" means a signal embodying a program which is emitted and passes through a satellite;

(xxxviii) "prospective owner", in relation to copyright, means a person who shall be entitled to the copyright, wholly or partially, in a work in which copyright does not yet subsist or whose entitlement to the copyright which does exist shall become effective upon a future event;

(xxxix) "published edition" means the first print by whatever process of a particular typographical arrangement of a literary or musical work;

(xl) "qualified person" means a qualified person within the meaning of section 3 (1);

(xli) "rebroadcasting" means the simultaneous or subsequent broadcasting by one broadcaster of the broadcast of another broadcaster;

(xlii) "record" means any disc, tape, perforated role or other device in or on which sounds, or data or signals representing sounds, are embodied or represented so as to be capable of being automatically reproduced or performed therefrom;

(xliii) "Registrar" means the Registrar of Copyright, who shall be the person appointed as Registrar of Patents under section 7 of the Patents Act, 1978;

(xliv) "regulation" means a regulation made under this Act;

(xlv) "reproduction", in relation to—

(a) a literary or musical work or a broadcast, includes a reproduction in the form of a record or a cinematograph film;

(b) an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form;

(c) any work, includes a reproduction made from a reproduction of that work;

and references to "reproduce" and "reproducing" shall be construed accordingly;

(xlvi) "satellite" means any device in extra-terrestrial space capable of transmitting signals;

(xlvii) "signal" means an electronically generated carrier capable of transmitting programmes;

(xlviii) "sculpture" includes any cast or model made for purposes of sculpture;

(xlix) "sound recording" means any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film;

(l) "this Act" includes the regulations;

(li) "work" a work contemplated in section 2;

(lii) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors;

(liii) "writing" includes any form of notation, whether by hand or by printing, typewriting or any similar process.

(2) Any reference in this Act to a sound-track associated with a cinematograph film shall be construed as a reference to any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded or which is issued by the author of the film for use in conjunction with such an article.

(2A) Any reference in this Act to the doing of any act in relation to any work shall, unless the context otherwise indicates, be construed as a reference also to the doing of any such act in relation to any substantial part of such work.

(3) The provisions of this Act shall with reference to any act or omission outside the territorial limits of the Republic by or on any ship or aircraft registered under any law in the Republic apply in the same manner as it applies with reference to acts or omissions within the territorial limits of the Republic.

(4) Notwithstanding the provisions of paragraph(i) of the definition of "author" in subsection(1), the author of a computer program made before the date of commencement of the Copyright Amendment Act, 1992, shall be deemed to be the person who first made or created the program, but if such computer program is original and has been published by a qualified person, such person shall be presumed to be the owner of the copyright subsisting in the computer program concerned, unless the contrary is proved.

(5) For the purposes of this Act the following provisions shall apply in connection with the publication of a work:

(a) Subject to paragraph (e), a work shall be deemed to have been published if copies of such work have been issued to the public with the consent of the owner of the copyright in the work in sufficient quantities to reasonably meet the needs of the public, having regard to the nature of the work.

(b) Publication of a cinematograph film or sound recording is the sale, letting, hire or offer for sale or hire, of copies thereof.

(c) A publication shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere within a period of 30 days.

(d) Publication shall not include—

(i) a performance of a musical or dramatic work, cinematograph film or sound recording;

(ii) a public delivery of a literary work;

(iii) a transmission in a diffusion service;

(iv) a broadcasting of a work;

(v) an exhibition of a work of art;

(vi) a construction of a work of architecture.

(e) For the purposes of sections 6, 7 and 11 (b), a work shall be deemed to be published if copies thereof have been issued to the public.

CHAPTER 1

COPYRIGHT IN ORIGINAL WORKS

Works eligible for copyright

2. (1) Subject to the provisions of this Act, the following works, if they are original, shall be eligible for copyright—

(a) literary works;

(b) musical works;

(c) artistic works;

(d) cinematograph films;

(e) sound recordings;

(f) broadcasts;

(g) programme-carrying signals;

(h) published editions;
(i) computer programs.

(2) A work, except a broadcast or programme-carrying signal, shall not be eligible for copyright unless the work has been written down, recorded, represented in digital data or signals or otherwise reduced to a material form.

(2A) A broadcast or a programme-carrying signal shall not be eligible for copyright until, in the case of a broadcast, it has been broadcast and, in the case of a programmecarrying signal, it has been transmitted by a satellite.

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

Copyright by virtue of nationality, domicile or residence, and duration of copyright

3. (1) Copyright shall be conferred by this section on every work, eligible for copyright, of which the author or, in the case of a work of joint authorship, any one of the authors is at the time the work or a substantial part thereof is made, a qualified person, that is—

(a) in the case of an individual, a person who is a South African citizen or is domiciled or resident in the Republic; or

(b) in the case of a juristic person, a body incorporated under the laws of the Republic:

Provided that a work of architecture erected in the Republic or any other artistic work incorporated in a building or any other permanent structure in the Republic, shall be eligible for copyright, whether or not the author was a qualified person.

(2) The term of copyright conferred by this section shall be, in the case of—

(a) literary or musical works or artistic works, other than photographs, the life of the author and fifty years from the end of the year in which the author dies: Provided that if before the death of the author none of the following acts had been done in respect of such works or an adaptation thereof, namely—

(i) the publication thereof;
(ii) the performance thereof in public;
(iii) the offer for sale to the public of records thereof;
(iv) the broadcasting thereof,

the term of copyright shall continue to subsist for a period of fifty years from the end of the year in which the first of the said acts is done;

(b) cinematograph films, photographs and computer programs, fifty years from the end of the year in which the work—

(i) is made available to the public with the consent of the owner of the copyright; or
(ii) is first published,

whichever term is the longer, or failing such an event within fifty years of the making of the work, fifty years from the end of the year in which the work is made;

(c) sound recordings, fifty years from the end of the year in which the recording is first published;

(d) broadcasts, fifty years from the end of the year in which the broadcast first takes place;

(e) programme-carrying signals, fifty years from the end of the year in which the signals are emitted to a satellite;

(f) published editions, fifty years from the end of the year in which the edition is first published.

(3)

(a) In the case of anonymous or pseudonymous works, the copyright therein shall subsist for fifty years from the end of the year in which the work is made available to the public with the consent of the owner of the copyright or from the end of the year in which it is reasonable to presume that the author died, whichever term is the shorter.

(b) In the event of the identity of the author becoming known before the expiration of the period referred to in paragraph (a), the term of protection of the copyright shall be calculated in accordance with the provisions of subsection (2).

(4) In the case of a work of joint authorship the reference in the preceding subsections to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.

Copyright by reference to country of origin

4. (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which—

(a) being a literary, musical or artistic work or a sound recording, is first published in the Republic;

(b) being a broadcast, is made in the Republic;
(c) being a programme-carrying signal, is emitted to a satellite from a place in the Republic;
(d) being a cinematograph film, is first published or made in the Republic;
(e) being a published edition, is first published in the Republic;
(f) being a computer program, is first published or made in the Republic,

and in respect of which copyright is not conferred by section 3.
(2) Copyright conferred on a work by this section shall be subject to the same term of copyright provided for in section 3 for a similar work.

Copyright in relation to the state and certain international organizations

5. (1) This Act shall bind the state.
(2) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the state or such international organizations as may be prescribed.
(3) Copyright conferred by this section on a literary or musical work or an artistic work, other than a photograph, shall subsist for fifty years from the end of the year in which the work is first published.
(4) Copyright conferred by this section on a cinematograph film, photograph, sound recording, broadcast, programme-carrying signal, published edition or a computer program shall be subject to the same term of copyright provided for in section 3 for a similar work.
(5) Sections 3 and 4 shall not confer copyright on works with reference to which this section applies.
(6) Copyright which vests in the state shall for administrative purposes be deemed to vest in such officer in the public service as may be designated by the State President by proclamation in the Gazette.

Nature of copyright in literary or musical works

6. Copyright in a literary or musical work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

(a) Reproducing the work in any manner or form;
(b) publishing the work if it was hitherto unpublished;
(c) performing the work in public;
(d) broadcasting the work;
(e) causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;
(f) making an adaptation of the work;
(g) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e) inclusive.

Nature of copyright in artistic works

7. Copyright in an artistic work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

(a) Reproducing the work in any manner or form;
(b) publishing the work if it was hitherto unpublished;
(c) including the work in a cinematograph film or a television broadcast;
(d) causing a television or other programme, which includes the work, to be transmitted in a diffusion service, unless such service transmits a lawful tele- vision broadcast, including the work, and is operated by the original broadcaster;
(e) making an adaptation of the work;
(f) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (d) inclusive.

Nature of copyright in cinematograph films

8. (1) Copyright in a cinematograph film vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

(a) Reproducing the film in any manner or form, including making a still photograph therefrom;
(b) causing the film, in so far as it consists of images, to be seen in public, or, in so far as it consists of sounds, to be heard in public;
(c) broadcasting the film;
(d) causing the film to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the film, and is operated by the original broadcaster;
(e) making an adaptation of the film;
(f) doing, in relation to an adaptation of the film, any of the acts specified in relation to the film in paragraphs (a) to (d) inclusive;
(g) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the film.

(2) [Sub-s.(2) deleted by s.8 (c) of Act 125/1992.]

Nature of copyright in sound recordings

9. Copyright in a sound recording vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

(a) Making, directly or indirectly, a record embodying the sound recording;
(b) letting, or offering or exposing for hire by way of trade, directly or indirectly, a reproduction of the sound recording;
(c) broadcasting the sound recording;
(d) causing the sound recording to be transmitted in a diffusion service, unless that service transmits a lawful broadcast, including the sound recording, and is operated by the original broadcaster;
(e) communicating the sound recording to the public.

[Section 9 amended by s.2 of Act 9/2002]

Royalties

9A. (1)

(a) In the absence of an agreement to the contrary, no person may broadcast, cause the transmission of or play a sound recording as contemplated in section 9(9), (d) or (e) without payment of a royalty to the owner of the relevant copyright.
(b) The amount of any royalty contemplated in paragraph (a) shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, or between their representative collecting societies.
(c) In the absence of an agreement contemplated in paragraph (b), the user, performer or owner may refer the matter to the Copyright Tribunal referred to in section 29(1) or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

(2)

(a) The owner of the copyright who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured on the sound recording in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers' Protection Act, 1967 (Act No. 11 of 1967).
(b) The performer's share of the royalty shall be determined by an agreement between the performer and the owner of copyright, or between their representative collecting societies.
(c) In the absence of an agreement contemplated in paragraph (b), the performer or owner may refer the matter to the Copyright Tribunal referred to in section 29(1), or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).
(d) Any payment made by the user of the sound recording in terms of this subsection shall be deemed to have discharged any obligation which that user might have to make any payment in respect of his or her use of a corresponding fixation in terms of section 5 of the Performers' Protection Act, 1967 (Act No. 11 of 1967).

(3) In the event of any right to a royalty being assigned to any successor in title, either by contractual arrangement, operation of law, testamentary disposition or otherwise, any successor in title shall be entitled to enforce such right to a royalty against the person who in terms of this section is obliged to pay or against his or her successor in title.

[Section 9A inserted by s.3 of Act 9/2002]

Nature of copyright in broadcasts

10. Copyright in a broadcast vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

(a) Reproducing, directly or indirectly, the broadcast in any manner or form, including, in the case of a television broadcast, making a still photograph therefrom;

(b) rebroadcasting the broadcast;

(c) causing the broadcast to be transmitted in a diffusion service, unless such service is operated by the original broadcaster.

Nature of copyright in programme-carrying signals

11. Copyright in programmecarrying signals vest the exclusive right to undertake, or to authorize, the direct or indirect distribution of such signals by any distributor to the general public or any section thereof in the Republic, or from the Republic.

Nature of copyright in published editions

11A. Copyright in a published edition vests the exclusive right to make or to authorize the making of a reproduction of the edition in any manner.

Nature of copyright in computer programs

11B. Copyright in a computer program vests the exclusive right to do or authorize the doing of any of the following acts in the Republic:

(a) Reproducing the computer program in any manner or form;

(b) publishing the computer program if it was hitherto unpublished;

(c) performing the computer program in public;

(d) broadcasting the computer program;

(e) causing the computer program to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the computer program, and is operated by the original broadcaster;

(f) making an adaptation of the computer program;

(g) doing, in relation to an adaptation of the computer program, any of the acts specified in relation to the computer program in paragraphs (a) to (e) inclusive;

(h) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.

General exceptions from protection of literary and musical works

12. (1) Copyright shall not be infringed by any fair dealing with a literary or musical work—

(a) for the purposes of research or private study by, or the personal or private use of, the person using the work;

(b) for the purposes of criticism or review of that work or of another work; or

(c) for the purpose of reporting current events—

(i) in a newspaper, magazine or similar periodical; or

(ii) by means of broadcasting or in a cinematograph film:

Provided that, in the case of paragraphs (b) and (c) (i), the source shall be mentioned, as well as the name of the author if it appears on the work.

(2) The copyright in a literary or musical work shall not be infringed by using the work for the purposes of judicial proceedings or by reproducing it for the purposes of a report of judicial proceedings.

(3) The copyright in a literary or musical work which is lawfully available to the public shall not be infringed by any quotation therefrom, including any quotation from articles in newspapers or periodicals that are in the form of summaries of any such work: Provided that the quotation shall be compatible with fair practice, that the extent thereof shall not exceed the extent justified by the purpose and that the source shall be mentioned, as well as the name of the author if it appears on the work.

(4) The copyright in a literary or musical work shall not be infringed by using such work, to the extent justified by the purpose, by way of illustration in any publication, broadcast or sound or visual record for teaching: Provided that such use shall be compatible with fair practice and that the source shall be mentioned, as well as the name of the author if it appears on the work.

(5)

(a) The copyright in a literary or musical work shall not be infringed by the reproduction of such work by a broadcaster by means of its own facilities where such reproduction or any copy thereof is intended exclusively for lawful broadcasts of the broadcaster and is destroyed before the expiration of a period of six months immediately following the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work.

(b) Any reproduction of a work made under paragraph (a) may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcaster, but shall, subject to the provisions of this Act, not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work.

(6)

(a) The copyright in a lecture, address or other work of a similar nature which is delivered in public shall not be infringed by reproducing it in the press or by broadcasting it, if such reproduction or broadcast is for an informatory purpose.

(b) The author of a lecture, address or other work referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(7) The copyright in an article published in a newspaper or periodical, or in a broadcast, on any current economic, political or religious topic shall not be infringed by reproducing it in the press or broadcasting it, if such reproduction or broadcast has not been expressly reserved and the source is clearly mentioned.

(8)

(a) No copyright shall subsist in official texts of a legislative, administrative or legal nature, or in official translations of such texts, or in speeches of a political nature or in speeches delivered in the course of legal proceedings, or in news of the day that are mere items of press information.

(b) The author of the speeches referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(9) The provisions of subsections (1) to (7) inclusive shall apply also with reference to the making or use of an adaptation of a work.

(10) The provisions of subsections(6) and (7) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.

(11) The provisions of subsections (1) to (4) inclusive and (6), (7) and (10) shall be construed as embracing the right to use the work in question either in its original language or in a different language, and the right of translation of the author shall, in the latter event, be deemed not to have been infringed.

(12) The copyright in a literary or musical work shall not be infringed by the use thereof in a bona fide demonstration of radio or television receivers or any type of recording equipment or playback equipment to a client by a dealer in such equipment.

(13) An authorization to use a literary work as a basis for the making of a cinematograph film or as a contribution of a literary work to such making, shall, in the absence of an agreement to the contrary, include the right to broadcast such film.

General exceptions in respect of reproduction of works

13. In addition to reproductions permitted in terms of this Act reproduction of a work shall also be permitted as prescribed by regulation, but in such a manner that the reproduction is not in conflict with a normal exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright.

Special exception in respect of records of musical works

14. (1) The copyright in a musical work shall not be infringed by a person (in this section referred to as the "manufacturer") who makes a record of the work or of an adaptation thereof in the Republic, whether from an imported disc, tape, matrix or otherwise, if—

(a) records embodying the work or a similar adaptation of the work were previously made in or imported into the Republic for the purposes of retail sale and were so made or imported by, or with the licence of, the owner of the copyright in the work;

(b) before making the record the manufacturer gave the prescribed notice to the owner of the copyright of his intention to make it;

(c) the manufacturer intends to sell the record by retail or to supply it for the purpose of resale by retail by another person or to use it for making other records to be so sold or so supplied; and

(d) in the case of a record which is sold by retail or supplied for the purpose of resale by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, the prescribed royalties.

(2) Where a record comprises, with or without other material, a performance of a musical work or of an adaptation of a musical work in which words are sung or are spoken that are incidental to, or in association with, the music and no copyright subsists in that work or, if copyright does subsist therein, the conditions specified in subsection (1) are fulfilled in relation to such copyright and—

(a) the words consist or form part of a literary work in which copyright subsists; and

(b) the records referred to in subsection (1) (a) were made or imported by or with the licence of the owner of the copyright in that literary work; and

(c) the conditions specified in subsection (1) (b) and (d) are fulfilled in relation to the owner of that copyright,

the making of the record shall not constitute an infringement of the copyright in the literary work.

(3) For the purposes of this section an adaptation of a work shall be deemed to be similar to an adaptation thereof embodied in a previous record if the two adaptations do not substantially differ in their treatment of the work, either in respect of style or, apart from any difference in number, in respect of the performers required to perform them.

(4) A manufacturer may for the purposes of paragraph (a) of subsection (1) make the prescribed enquiries in order to ascertain whether the previous records referred to in that paragraph were previously made in or imported into the Republic, and if the owner of the copyright fails to reply to such enquiries within the prescribed period, the said previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(5) The preceding provisions of this section shall apply also with reference to records of a part of a work or an adaptation thereof: Provided that the provisions of subsection (1) shall not apply with reference to—

(a) a record of the whole of a work or an adaptation thereof unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation; or

(b) a record of a part of a work or an adaptation thereof unless the records previously made in or imported into the Republic as contemplated in paragraph (a) of that subsection were of, or included, that part of the work or of a similar adaptation.

General exceptions from protection of artistic works

15. (1) The copyright in an artistic work shall not be infringed by its inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such inclusion is merely by way of background, or incidental, to the principal matters represented in the film, broadcast or transmission.

(2) The copyright in a work of architecture or in the relevant drawings shall not be infringed by the reconstruction of that work on the same site in the same style as the original.

(3) The copyright in an artistic work shall not be infringed by its reproduction or inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such work is permanently situated in a street, square or a similar public place.

(3A)(a) The copyright in an artistic work of which three-dimensional reproductions were made available, whether inside or outside the Republic, to the public by or with the consent of the copyright owner (hereinafter referred to as authorized reproductions), shall not be infringed if any person without the consent of the owner makes or makes available to the public three-dimensional reproductions or adaptations of the authorized reproductions, provided—

(i) [Sub-para. (i) deleted by s.2 (1) (a) of Act 13/1988.]

(ii) the authorized reproductions primarily have a utilitarian purpose and are made by an industrial process.

(b) …

[Sub-s. (3A) inserted by s. 2 of Act 66/1983. Para. (b) deleted by s.2 (1) (b) of Act 13/1988.]

(4) The provisions of section 12 (1), (2), (4), (5), (9), (10), (12) and (13) shall mutatis mutandis, in so far as they can be applied, apply with reference to artistic works.

General exceptions regarding protection of cinematograph films

16. (1) The provisions of section 12 (1) (b) and (c), (2), (3), (4), (12) and (13) shall mutatis mutandis apply with reference to cinematograph films.
(2) Where sounds embodied in a sound-track associated with a cinematograph film are also embodied in a record other than such a soundtrack or in a record derived directly or indirectly from such a sound-track, the copyright in the film shall not be infringed by the use of that record.

General exceptions regarding protection of sound recordings

17. The provisions of section 12 (1) (b) and (c), (2), (3), (4), (5), (12) and (13) shall mutatis mutandis apply with reference to sound recordings.

General exceptions regarding protection of broadcasts

18. The provisions of section 12 (1) to (5) inclusive, (12) and (13) shall mutatis mutandis apply with reference to broadcasts.

General exceptions from protection of programme-carrying signals

19. (1) The copyright in programme-carrying signals shall not be infringed by the distribution of short excerpts of the programme so carried—

(a) that consist of reports of current events; or

(b) as are compatible with fair practice,

and to the extent justified by the informatory purpose of such excerpts.
(2) The provisions of this section shall not apply with reference to a programme carried by programme-carrying signals representing a sporting event.

General exceptions regarding protection of published editions

19A. The provisions of section 12 (1), (2), (4), (5), (8), (12) and (13) shall mutatis mutandis apply with reference to published editions.

General exceptions regarding protection of computer programs

19B.(1) Subject to the provisions of section 23 (2) (d), the provisions of section 12 (1) (b) and (c), (2), (3), (4), (5), (12) and (13) shall mutatis mutandis apply, in so far as they can be applied, with reference to computer programs.
(2) The copyright in a computer program shall not be infringed by a person who is in lawful possession of that computer program, or an authorized copy thereof, if—

(a) he makes copies thereof to the extent reasonably necessary for back-up purposes;

(b) a copy so made is intended exclusively for personal or private purposes; and

(c) such copy is destroyed when the possession of the computer program in question, or authorized copy thereof, ceases to be lawful.

Moral rights

20. (1) Notwithstanding the transfer of the copyright in a literary, musical or artistic work, in a cinematograph film or in a computer program, the author shall have the right to claim authorship of the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author: Provided that an author who authorizes the use of his work in a cinematograph film or a television broadcast or an author of a computer

program or a work associated with a computer program may not prevent or object to modifications that are absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work.
(2) Any infringement of the provisions of this section shall be treated as an infringement of copyright under Chapter 2, and for the purposes of the provisions of the said Chapter the author shall be deemed to be the owner of the copyright in question.

Ownership of copyright

21. (1)

(a) Subject to the provisions of this section, the ownership of any copyright conferred by section 3 or 4 on any work shall vest in the author or, in the case of a work of joint authorship, in the co-authors of the work.

(b) Where a literary or artistic work is made by an author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be the owner of the copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical or to reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.

(c) Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of a cinematograph film or the making of a sound recording and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, such person shall, subject to the provisions of paragraph (b), be the owner of any copyright subsisting therein by virtue of section 3 or 4.

(d) Where in a case not falling within either paragraph (b) or (c) a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.

(e) Paragraphs (b), (c) and (d) shall in any particular case have effect subject to any agreement excluding the operation thereof and subject to the provisions of section 20.

(2) Ownership of any copyright conferred by section 5 shall initially vest in the state or the international organization concerned, and not in the author.

Assignment and licences in respect of copyright

22. (1) Subject to the provisions of this section, copyright shall be transmissible as movable property by assignment, testamentary disposition or operation of law.
(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the term of the copyright, or to a specified country or other geographical area.
(3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright shall have effect unless it is in writing signed by or on behalf of the assignor, the licenser or, in the case of an exclusive sublicence, the exclusive sublicenser, as the case may be.
(4) A non-exclusive licence to do an act which is subject to copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time: Provided that such a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.
(5) An assignment, licence or testamentary disposition may be granted or made in respect of the copyright in a future work, or the copyright in an existing work in which copyright does not subsist but will come into being in the future, and the future copyright in any such work shall be transmissible as movable property.
(6) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of a stipulation to the contrary, be taken to include the disposition of any copyright or future copyright in the work which is vested in the deceased at the time of his death.
(7) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright, shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser, and any reference in this Act to the doing in relation to any copyright of anything with or without the licence of the owner of the copyright shall be construed accordingly.

(8) Where the doing of anything is authorized by the grantee of a licence or a person deriving title from the grantee, and it is within the terms, including any implied terms, of the licence for him to authorize it, it shall for the purpose of this Act be deemed to be done with the licence of the grantor and of every person, if any, upon whom the licence is binding.

CHAPTER 2

INFRINGEMENTS OF COPYRIGHT AND REMEDIES

Infringement

23. (1) Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act which the owner has the exclusive rights to do or to authorize.
(2) Without derogating from the generality of subsection (1), copyright shall be infringed by any person who, without the licence of the owner of the copyright and at a time when copyright subsists in a work—

(a) imports an article into the Republic for a purpose other than for his private and domestic use;
(b) sells, lets, or by way of trade offers or exposes for sale or hire in the Republic any article;
(c) distributes in the Republic any article for the purposes of trade, or for any other purpose, to such an extent that the owner of the copyright in question is prejudicially affected; or
(d) acquires an article relating to a computer program in the Republic,

if to his knowledge the making of that article constituted an infringement of that copyright or would have constituted such an infringement if the article had been made in the Republic.
(3) The copyright in a literary or musical work shall be infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work: Provided that this subsection shall not apply in a case where the person permitting the place of public entertainment to be so used was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright.
(4) [Sub-s.(4) deleted by s.20 (c) of Act 125/1992.]

Action by owner of copyright for infringement

24. (1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright, and in any action for such an infringement all such relief by way of damages, interdict, delivery of infringing copies or plates used or intended to be used for infringing copies or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.
(1A) In lieu of damages the plaintiff may, at his or her option, be awarded an amount calculated on the basis of a reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned.
(1B) For the purposes of determining the amount of damages or a reasonable royalty to be awarded under this section or section 25 (2), the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiry as the court considers necessary.
(1C) Before the owner of copyright institutes proceedings under this section, he or she shall give notice in writing to the exclusive licensee or sub-licensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.
(2) Where in an action for infringement of copyright it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement.
(3) Where in an action under this section an infringement of copyright is proved or admitted, and the court having regard, in addition to all other material considerations, to—

(a) the flagrancy of the infringement; and

(b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court shall in assessing damages for the infringement have power to award such additional damages as the court may deem fit.

(4) In an action for infringement of copyright in respect of the construction of a building, no interdict or other order shall be made—

(a) after the construction of the building has been begun so as to prevent it from being completed; or

(b) so as to require the building, in so far as it has been constructed, to be demolished.

Rights of action and remedies of exclusive licensee and exclusive sub-licensee

25. (1) An exclusive licensee and an exclusive sub-licensee shall have the same rights of action and be entitled to the same remedies as if the licence were an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under which the licence and sub-licence were granted.

(2) Before an exclusive licensee or sub-licensee institutes proceedings under subsection (1), he or she shall give notice in writing to the owner of the copyright concerned of the intention to do so, and the owner may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.

Onus of proof in proceedings

26. (1) Where in the case of a literary, musical or artistic work or a computer program a name purporting to be that of the author appeared on copies of the said work or program as published or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared shall, if it was his true name or a name by which he was commonly known, in any proceedings brought by virtue of this Chapter be presumed, unless the contrary is proved, to be the author of the work or program.

(2) In the case of a work or program alleged to be a work or program of joint authorship, subsection (1) shall apply in relation to each person alleged to be one of the authors of the work or program as if references in that subsection to the author were references to one of the authors.

(3) Where in any proceedings brought by virtue of this Chapter with respect to a literary, musical or artistic work or a computer program which is anonymous or pseudonymous it is established—

(a) that the work or program was first published in the Republic and was so published within the period of fifty years ending with the beginning of the calendar year in which the proceedings were brought; and

(b) that a name purporting to be that of the publisher appeared on copies of the work or program as first published,

then, unless the contrary is shown, copyright shall be presumed to subsist in the work or program and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication: Provided that this subsection shall not apply if the actual name of the author of a pseudonymous work is commonly known.

(4) Where in any proceedings brought by virtue of this Chapter with respect to a literary, musical or artistic work or a computer program it is proved or admitted that the author of the work or program is dead, the work or program shall be presumed to be an original work or program unless the contrary is proved.

(5) Subsection (4) shall also apply where a work or program has been published and—

(a) the publication was anonymous or under a name alleged by the plaintiff or the State to be a pseudonym; and

(b) it is not shown that the work or program has ever been published under the true name of the author or under a name by which he was commonly known or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry.

(6) Where in any proceedings brought by virtue of this Chapter with respect to the alleged infringement of copyright in a cinematograph film it is proved that the name purporting to be the name of the author of that film appears thereon in the prescribed manner, the person whose name so appears shall be presumed to be the author of that film, unless the contrary is proved.

(7) Where in any proceedings brought by virtue of this Chapter with respect to the alleged infringement of copyright in a sound recording it is proved that records embodying that recording or part thereof have been issued to the public and that at the time when those records were so issued the following claims appeared on a label or any other printed matter affixed to such records or in or on anything in which they were contained, that is to say—

(a) that a person named on the label or printed matter is the author of the sound recording; or

(b) that the recording was first published in a year and at a place specified on the label or printed matter,

that label or printed matter shall be sufficient evidence of the facts so stated, except in so far as the contrary is proved.

(7A) A claim contemplated in paragraph (a) of subsection (7) may be made by means of the symbol "C" in conjunction with the name of the person concerned, and a claim contemplated in paragraph (b) of that subsection may be made by means of the symbol "P" in conjunction with the year and place in question.

(8) (Sub-s.(8) deleted by s. 24(b) of Act 125/1992).

(9) In any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a cinematograph film registered in terms of the Registration of Copyright in Cinematograph Films Act, 1977 (Act No. 62 of 1977), it shall be presumed—

(a) that every party to those proceedings had knowledge of the particulars entered in the register of copyright mentioned in section 15 of the said Act from the date of the lodging of the application in question to record those particulars;

(b) that the person who is alleged to have done an act which infringes the relevant copyright did that act without the required authority, unless the contrary is proved.

(10) In any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a cinematograph film, a sound recording or a computer program, it shall be presumed, until the contrary is proved, that any person trading in the selling, letting or distribution of copies of any of the said works, and who was found in possession of a copy of any of such works, sold or let for hire or by way of trade offered or exposed for sale or hire such copy.

(11) Where in any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a work it is proved that the person alleged to have done an act which allegedly infringes the relevant copyright did such act without the authority of the exclusive licensee, it shall be presumed, unless the contrary is proved, that the relevant act was done also without the authority of the owner of the copyright concerned.

(12)

(a) In any proceedings by virtue of this Chapter relating to the alleged infringement of the copyright in a work, evidence to prove—

(i) the subsistence of the copyright in that work; or

(ii) the title of any person in respect of such copyright, whether by way of ownership or licence,

may be adduced by way of affidavit, and the mere production of such affidavit in such proceedings shall be prima facie proof of the relevant facts.

(b) The court before which an affidavit referred to in paragraph (a) is produced, may in its discretion order the person who made the affidavit to be subpoenaed to give oral evidence in the proceedings in question, or may cause written interrogatories to be submitted to such person for reply, and any reply purporting to be a reply from such person, shall likewise be admissible in evidence in such proceedings.

Penalties and proceedings in respect of dealings which infringe copyright

27. (1) Any person who at a time when copyright subsists in a work, without the authority of the owner of the copyright—

(a) makes for sale or hire;

(b) sells or lets for hire or by way of trade offers or exposes for sale or hire;

(c) by way of trade exhibits in public;

(d) imports into the Republic otherwise than for his private or domestic use;

(e) distributes for purposes of trade; or

(f) distributes for any other purposes to such an extent that the owner of the copyright is prejudicially affected,

articles which he knows to be infringing copies of the work, shall be guilty of an offence.

(2) Any person who at a time when copyright subsists in a work makes or has in his possession a plate knowing that it is to be used for making infringing copies of the work, shall be guilty of an offence.

(3) Any person who causes a literary or musical work to be performed in public knowing that copyright subsists in the work and that performance constitutes an infringement of the copyright, shall be guilty of an offence.

(4) Any person who causes a broadcast to be rebroadcast or transmitted in a diffusion service knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright, shall be guilty of an offence.

(5) Any person who causes programme-carrying signals to be distributed by a distributor for whom they were not intended knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright, shall be guilty of an offence.

(6) A person convicted of an offence under this section shall be liable—

(a) in the case of a first conviction, to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, for each article to which the offence relates;

(b) in any other case, to a fine not exceeding ten thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, for each article to which the offence relates.

(7) [Sub-s.(7) deleted by s.24 (b) of Act 125/1992.]

(8) [Sub-s. (8) added by s. 11 (c) of Act 52/1984 and deleted by s.24 (b) of Act 125/1992.]

Provision for restricting importation of copies

28. (1) The owner of the copyright in any published work may give notice in writing to the Commissioner for Customs and Excise (in this section referred to as "the Commissioner")—

(a) that he is the owner of the copyright in the work; and

(b) that he requests the Commissioner to treat as prohibited goods, during a period specified in the notice, copies of the work to which this section applies:

Provided that the period specified in a notice under this subsection shall not extend beyond the end of the period for which the copyright is to subsist: Provided further that the Commissioner shall not be bound to act in terms of any such notice unless the owner of the copyright furnishes him with security in such form and for such amount as he may require to secure the fulfilment of any liability and the payment of any expense which he may incur by reason of the detention by him of any copy of the work to which the notice relates or as a result of anything done by him in relation to a copy so detained.

(2) This section shall apply to any copy of the work in question made outside the Republic which if it had been made in the Republic would be an infringing copy of the work.

(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation into the Republic at a time before the end of the period specified in the notice of any copy of the work to which this section applies shall be prohibited.

(4) Notwithstanding anything contained in the Customs and Excise Act, 1964 (Act No. 91 of 1964), a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason of the fact that any goods are treated as prohibited goods by virtue of this section.

(5) This section shall mutatis mutandis apply with reference to an exclusive licensee who has the right to import into the Republic any work published elsewhere.

CHAPTER 3

COPYRIGHT TRIBUNAL

Establishment of Copyright Tribunal

29. (1) The judge or acting judge who is from time to time designated as Commissioner of Patents in terms of section 8 of the Patents Act, 1978, shall also be the Copyright Tribunal (in this Chapter referred to as the tribunal) for the purposes of this Act.

(2) The tribunal may order that the costs or expenses of any proceeding before it incurred by any party shall be paid by any other party, and may tax or settle the amount of any costs or expenses to be paid under any such order or direct in what manner they are to be taxed.

(3)

(a) Regulations may be prescribed as to the procedure in connection with the making of references and applications to the tribunal and for regulating proceedings before the tribunal and as to the fees chargeable in respect of those proceedings.

(b) Any such regulations may in relation to proceedings before the tribunal apply any of the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, any of the provisions applicable in the court of the Commissioner of Patents in terms of the Patents Act, 1978.

(c) Any regulations may include provision for—

(i) requiring notice of any intended application to the court under section 36 to be given to the tribunal and to the other parties to the proceedings;

(ii) suspending or authorizing or requiring the tribunal to suspend the operation of orders of the tribunal in cases where after giving its decision an application under section 36 to any provincial division of the Supreme Court is noted;

(iii) modifying in relation to orders of the tribunal, of which the operation is suspended, the operation of any provisions of this Chapter as to the effect of orders made thereunder;

(iv) the publication of notices or the taking of any other steps for ensuring that persons affected by the suspension of an order of the tribunal will be informed of its suspension;

(v) regulating or prescribing any other matters incidental to or consequential upon any request, application, order or decision under section 36.

(4) Without prejudice to any method available by law for the proof of orders of the tribunal, a document purporting to be a copy of any such order and to be certified by the Registrar to be a true copy thereof shall in any legal proceedings be sufficient evidence of the order unless the contrary is proved.

(5) The Registrar shall act as the registrar of the tribunal.

(6) Any reference in this Chapter to the giving of an opportunity to any person of presenting his case shall be construed as a reference to the giving to that person of the opportunity of submitting representations in writing and of being heard.

General provisions as to jurisdiction of tribunal

30. Subject to the provisions of this Chapter, the function of the tribunal shall be to determine disputes arising between licensing bodies, or other persons from whom licences are required and persons requiring licences, or organizations claiming to be representatives of such persons, either—

(a) on the reference of a licence scheme to the tribunal; or

(b) on the application of a person requiring a licence either in accordance with a licence scheme or in a case not covered by a licence scheme.

Reference of licence schemes to tribunal

31. (1) Where at any time while a licence scheme is in operation a dispute arises with respect to the scheme between the licensing body operating the scheme and—

(a) an organization claiming to be representative of persons requiring licences in cases of a class to which the scheme applies; or

(b) any person claiming that he requires a licence in a case of a class to which the scheme applies,

the organization or person in question may refer the scheme to the tribunal in so far as it relates to cases of that class.

(2) The parties to a reference under this section shall be—

(a) the organization or person at whose instance the reference is made;

(b) the licensing body operating the scheme to which the reference relates; and

(c) such other organizations or persons (if any) as apply to the tribunal to be made parties to the reference and are in accordance with subsection (3) made parties thereto.

(3) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to a reference, and the tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the tribunal may, if it thinks fit make that organization or person a party to the reference.

(4) The tribunal shall not entertain a reference under this section by an organization unless the tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent.

(5) Subject to the provisions of subsection (4), the tribunal shall on any reference under this section consider the matter in dispute and after giving the parties to the reference an opportunity of presenting their respective cases, make such order, either confirming or varying the scheme in so far as it relates to cases of the class to which the reference relates, as the tribunal may determine to be reasonable in the circumstances.

(6) An order of the tribunal under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the tribunal may determine.
(7) Where the tribunal has made an order in respect of a licence scheme which has been referred to it, such scheme shall, notwithstanding anything contained therein, in so far as it relates to the class of cases in respect of which the order was made, thereafter remain in operation subject to the terms of the order: Provided that this subsection shall not apply in relation to a reference as respects any period after the reference has been withdrawn or has been discharged by virtue of subsection (4).

Further reference of scheme to tribunal

32. (1) Where the tribunal has made an order under section 31 with respect to a licence scheme—

(a) the licensing body operating the scheme;

(b) any organization claiming to be representative of persons requiring licences in cases of the class to which the order applies; or

(c) any person claiming that he requires a licence in a case of that class,

may, subject to the provisions of subsection (2), at any time while the order is in force, again refer the scheme to the tribunal in so far as it relates to cases of the class in respect of which the order applies.
(2) A licence scheme shall not, except with the special leave of the tribunal, again be referred to the tribunal under subsection (1)—

(a) where the relevant order was made so as to be in force indefinitely or for a period exceeding fifteen months, before the expiration of a period of twelve months from the date on which the order was made; or

(b) where such order was made so as to be in force for a period not exceeding fifteen months, at any time more than three months before the date of expiry of the order.

(3) The provisions of section 31 shall mutatis mutandis apply in respect of any reference under this section or any order made thereon, and the tribunal shall have power to make such order on any such reference as it deems just.

Applications to tribunal

33. (1) For the purposes of this Chapter a case shall be taken to be covered by a licence scheme if, in accordance with a licence scheme for the time being in operation, licences would be granted in cases of the class to which that case belongs: Provided that where in accordance with the provisions of a licence scheme—

(a) the licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences; and

(b) the case in question relates to one or more matters falling within such an exception,

that case shall be taken not to be covered by the scheme.
(2) Any person who claims that in a case covered by a licence scheme the licensing body operating the scheme has refused or failed to grant him a licence in accordance with the provisions of the scheme or to procure the grant to him of such a licence, may apply to the tribunal for an order under this section.
(3) An application for such an order may also be made by any person who claims that he requires a licence in a case not covered by a licence scheme, and either—

(a) that a licensing body or person has refused or failed to grant the licence or to procure the grant thereof, and that in the circumstances it is unreasonable that the licence should not be granted; or

(b) that any charges, terms or conditions subject to which a licensing body proposes that the licence should be granted are unreasonable.

(4) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to an application under subsection (2) or (3), and the tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the tribunal may if it thinks fit make that organization or person a party to the application.
(5) On any application under subsection (2) or (3) the tribunal shall give the applicant and the licensing body in question and every other party to the application an opportunity of presenting his case, and if the tribunal is satisfied that the claim of the applicant is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms and conditions and subject to the payment of such charges (if any) as the tribunal may—

(a) in the case of an application under subsection (2), determine to be applicable in accordance with the licence scheme; or

(b) in the case of an application under subsection (3), determine to be reasonable in the circumstances.

(6) Any reference in this section to failure to grant or procure the grant of a licence shall be construed as including a reference to a failure to grant it or to procure the grant thereof within a reasonable time after being requested to do so.

Diffusion service

34. In a dispute concerning the transmission of broadcasts in a diffusion service in the Republic, the tribunal shall disallow any claim under this Act to the extent to which the licences of the broadcaster concerned provide for or include such transmission in a diffusion service.

Effect of orders of tribunal, and supplementary provisions relating thereto

35. (1) Any person who complies with the conditions of an order made by the tribunal under this Chapter or who has given a satisfactory undertaking to the owner or prospective owner of the copyright to comply with such conditions, shall be deemed to be the holder of a licence under this Act.

(2) In the exercise of its jurisdiction in respect of licences relating to television broadcasts, the tribunal shall have regard inter alia to any conditions imposed by the promoters of any entertainment or other event which is to be comprised in the broadcasts, and in particular the tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

Appeals

36. (1) Any party to proceedings before the tribunal may appeal against any order or decision of the tribunal pursuant to such proceedings.

(2) Every appeal shall be noted and prosecuted in the manner prescribed by law for appeals against a civil order or decision of a single judge, and sections 20 and 21 of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply mutatis mutandis.

(3) The court may in respect of any such appeal—

(a) confirm, vary or set aside the order or decision appealed against, as the court may deem fair;

(b) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the tribunal with instructions in regard to the taking of further evidence or the setting out of further information;

(c) take any other course which in the opinion of the court is fair and may lead to the speedy and as far as may be possible inexpensive settlement of the case; and

(d) make such order as to costs as the court may deem fair.

CHAPTER 4

EXTENSION OR RESTRICTION OF OPERATION OF ACT

Application of Act to countries to which it does not extend

37. (1) The Minister may by notice in the Gazette provide that any provision of this Act specified in the notice shall in the case of any country so specified apply—

(a) in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in that country as it applies in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in the Republic;

(b) in relation to persons who at a material time are citizens or subjects of that country as it applies in relation to persons who at such a time are South African citizens;

(c) in relation to persons who at a material time are domiciled or resident in that country as it applies in relation to persons who at such a time are domiciled or resident in the Republic;

(d) in relation to bodies incorporated under the laws of that country as it applies in relation to bodies incorporated under the laws of the Republic;

(e) in relation to broadcasts made and programme-carrying signals emitted to a satellite from places in that country as it applies in relation to broadcasts made and programme-carrying signals emitted to a satellite from a place in the Republic.

(2) A notice under this section may provide—

(a) that any provisions referred to therein shall apply subject to such exceptions or modifications as may be specified in the notice;

(b) that such provisions shall so apply either generally or in relation to such classes of works or classes of cases as may be so specified.

(3) No notice shall be issued under this section in respect of any country which is not a party to a convention relating to copyright to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of works to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

38. [S.38 deleted by s.30 of Act 125/1992.]

CHAPTER 5

MISCELLANEOUS PROVISIONS

Regulations

39. The Minister may make regulations—

(a) as to any matter required or permitted by this Act to be prescribed by regulation;

(b) in consultation with the Minister of Finance, prescribing the tariff of fees payable in respect of proceedings before the Copyright Tribunal referred to in section 29(1);

(c) in consultation with the Minister of Finance, prescribing the remuneration and allowances of members of the advisory committee referred to in section 40, and of its subcommittees, and the conditions upon which such members shall be appointed;

(cA) in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 9A, and any other matter that it may be necessary and expedient to regulate for the proper functioning of such societies; and
[section 39(cA) inserted by s.4 of Act 9/2002]

(d) generally, as to any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

Advisory committee

40. (1)

(a) The Minister shall appoint an advisory committee consisting of a judge or a senior advocate of the Supreme Court of South Africa as chairman and such ex officio and other members as the Minister may from time to time determine.

(b) A member of the advisory committee shall hold office for such period as the Minister may direct and shall be eligible for reappointment upon the expiration of his period of office.

(2) The advisory committee shall as to witnesses and their evidence have the powers of a commission under the Commissions Act, 1947 (Act No. 8 of 1947).

(3) The advisory committee may from time to time make recommendations to the Minister in regard to any amendments to this Act and to the Trade Marks Act, 1963 (Act No. 62 of 1963), the Designs Act, 1967 (Act No. 57 of 1967), and the Patents Act, 1978 (Act No. 57 of 1978), and shall advise the Minister on any matter referred to it by the Minister.

(4)

(a) The advisory committee may constitute and maintain subcommittees.

(b) The advisory committee shall appoint as members of the subcommittees such of its members and such other persons and for such periods of office as the advisory committee may from time to time determine.

(5) The advisory committee may call to its assistance any person it may deem necessary to assist it with, or to investigate matters relating to, the functions referred to in subsection (3).

(6) The Registrar shall be responsible for the administration of the advisory committee and the subcommittees.

Savings

41. (1) Nothing in this Act shall affect any right or privilege of the State or of any other person under any law not expressly repealed, amended or modified by this Act.

(2) Nothing in this Act shall affect the right of the state or of any person deriving title from the state to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise, including any article forfeited by virtue of this Act or of any enactment repealed by this Act.

(3) The provisions of this Act shall not derogate from any rule of law relating to confidential or privileged information, unlawful competition or personality rights.

(4) Subject to the preceding provisions of this section, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

42. [S.42 deleted by s.32 of Act 125/1992.]

Application to work made before commencement of Act

43. This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter: Provided that—

(a) nothing in this Act contained shall—

(i) subject to paragraph (d), affect the ownership, duration or existence of any copyright which subsists under the Copyright Act, 1965 (Act No. 63 of 1965); or

(ii) subject to paragraph (c), be construed as creating copyright in any type of work in which copyright could not subsist prior to 11 September 1965;

(b) [Para. (b) deleted by s. 14 (b) of Act 52/1984.]

(c) the copyright in a cinematograph film made before the commencement of this Act shall be governed by the relevant provisions of this Act, subject to the qualification, in the case of a cinematograph film treated as an original dramatic work under section 35 of the Third Schedule to the Designs Act, 1916 (Act No. 9 of 1916)—

(i) that the owner of the copyright shall, if so required, remunerate the person who is the owner of a copyright in that original dramatical work for the purposes of that Act, which remuneration shall be determined by arbitration if agreement thereon cannot be reached; and

(ii) that the owner of the copyright in the cinematograph film or any person deriving rights in respect of the cinematograph film from such owner shall in excercising such rights in the cinematograph film be deemed not to infringe any rights in such original dramatical work under the said Act; and

(iii) that an act performed by virtue of a licence granted by the owner of the copyright in the original dramatical work under that Act and in existence before or at the time of coming into force of this subsection, shall be deemed to be performed or have been performed on the authority of the owner of the copyright in the cinematograph film.

(d) in the determination of the term of copyright contemplated in the proviso to section 3 (2) (a) in the case of a work in respect of which the copyright has expired at the commencement of the Copyright Amendment Act, 1984, on the ground that the period mentioned in the said paragraph has lapsed, it shall be deemed that, subject to any rights acquired by any person after the lapse of that period and before the said commencement, copyright did not expire on that ground.

Time when a work is made

44. (1) For the purposes of this Act a work, except a broadcast or programme-carrying signal, shall be deemed to have been made at the time when it was first reduced to writing, recorded or otherwise reduced to material form.
(2) A broadcast shall be deemed to have been made at the time when it was first broadcast.
(3) A programme-carrying signal shall be deemed to have been made at the time when it was first transmitted by a satellite.

Regulation and control of circulation, presentation or exhibition of works

45. (1) Notwithstanding anything to the contrary in this Act contained, the Minister may make such regulations as he may consider necessary in regard to the circulation, presentation or exhibition of any work or production.
(2) Such regulations may empower any person specified therein to prohibit the circulation, presentation or exhibition of any such work or production or to authorize the circulation, presentation or exhibition thereof on such conditions as may be specified in those regulations.
(3) The circulation, presentation or exhibition of any work or production in pursuance of authority granted in terms of such regulations shall not constitute an infringement of copyright in such work or production, but the author shall not thereby be deprived of his right to a reasonable remuneration, which shall in default of agreement be determined by arbitration.
(Date of commencement to be proclaimed.)

Repeal of laws

46. The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule: Provided that any proclamation, regulation or rule having effect under any provision so repealed and in force immediately prior to the commencement of this Act, shall continue in force after such commencement and may be repealed, amended or altered as if it had been made under this Act.

Short title and commencement

47. This Act shall be called the Copyright Act, 1978, and shall come into operation on 1 January 1979, except sections 1, 39 and 40, which shall come into operation upon promulgation of this Act in the Gazette, and except section 45, which shall come into operation on a date fixed by the State President by proclamation in the Gazette.

Schedule

No. and year of Act	Title	Extent of Repeal
Act 63/1965	Copyright Act, 1965	The whole, except section 46
Act 56/1967	Copyright Amendment Act, 1967	The whole
Act 75/1972	Copyright Amendment Act, 1972	The whole
Act 64/1975	Copyright Amendment Act, 1975	The whole